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### REMARKS/ARGUMENTS

Claims 1-3, 7-16, 19-22, 37-42, 45-49, 57 and 58 are pending in the application.

#### Claim Rejection Under 35 U.S.C. §102

Claims 1-3, 8-14, 16, 20-22, 42, and 45-49 have been rejected under 35 U.S.C. §102(b) as being anticipated by Curie et al. (U.S. Patent No. 5,378,240). The Examiner has stated that "Curie discloses a locking mechanism in a syringe having a retainer part 22, first formation/lug 60, second formation/recess 58, body part 12, connector part 74, 2 flexible legs, 54/56, bore 18, annular ledge 26 and connector protrusion 30/32/28."

It is respectfully submitted that the rejection is improper because it overlooks a fundamental aspect of the invention as claimed. Specifically, it should be noted that the Examiner has not stated that Curie discloses a locking mechanism as claimed having "the legs being mutually joined at respective distal ends thereof." As shown in Figs. 1, 3, 4 and 5 of the Curie '240 patent, there is a gap between the distal ends of the two legs and this gap is fundamental to the way in which this product works because the two ends must move together, such as into the position shown in Fig. 3, closing up the gap between the legs. Clearly, the Curie '240 patent does not disclose "the legs being mutually joined at respective distal ends thereof," and therefore does not anticipate the claimed invention.

#### Claim Rejections Under 35 U.S.C. §103

Claims 7, 19, 57 and 58 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Curie. The Examiner has stated that "it would have been an obvious matter of design choice to modify Curie to obtain the invention as specified in claim(s) 7, 19, 57 and 58."

It is respectfully submitted that these claims are allowable as dependent claims for the reasons set forth above with respect to the rejection under 35 U.S.C. §102(b). Curie does not teach or suggest the claimed locking mechanism "characterized by the legs being mutually joined at respective distal ends thereof." It would not have been obvious to the skilled person in the art to adapt the legs to be mutually joined at respective distal ends thereof. To the contrary, those having ordinary skill in the art would justifiably believe that the legs of the

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Cure et al. patent would be unable to move relative to one another if connected as required by the pending claims, and therefore would be inoperable. Further, if the ends of the legs could not be squeezed together from the locked-to-syringe barrel configuration (Figs. 1 and 5) to the locked-to-plunger configuration (Fig. 3), the legs could not physically enter the hole in the front of the plunger. In addition, catches 72, 112, and 114 would not be able to move toward or away from one another because they would be located at the respective distal ends of the legs and would not be able to engage the plunger catches since this requires the ends of the legs to move towards one another then spring back into the lock position. In summary, it would not have been obvious to achieve what is claimed in claim 1 and in claim 16 from the Curie '240 patent since it is fundamental to the operation of mechanism in the Curie '240 patent that the distal ends of the legs are moveable towards and away from one another.

It is also submitted that the rejection of dependent claim 7, 19, 57 and 58 is inappropriate. In particular, a rejection based on the opinion that features of an invention are "an obvious matter of design choice" is inappropriate whenever the design feature has any function that is not equivalent to the corresponding structure shown in the prior art (see for example *Ex parte Chrissy, Spano, and Wolff*, 201 USPQ 698 (Bd. Pat. App. & Int. 1976)). The specification discloses (page 11, lines 7-11) that the diamond shape or V-shaped configuration "provides additional resilience against squashing thereof by the connector part 14."

For all of the reasons above, claims 7, 19, 57 and 58 are patentable over the Curie patent.

Claim 15 has been rejected under 35 U.S.C. §103(a) as unpatentable over Curie in view of Hausser (U.S. Patent No. 5,342,309). The Examiner has stated that it would have been obvious to one having ordinary skill in the art to "modify the invention of Curie to include the ribs of Hausser in order to provide a more efficient means of engagement between the needle and the hub."

Dependent claim 15 is allowable for the reasons generally set forth above with respect to the rejection under 35 U.S.C. §102(b). The Hausser patent does not provide any teaching or suggestion that overcomes the deficiencies of Curie with respect to the requirement that the

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legs are mutually joined at respective distal ends thereof. Further, it appears that the Hausser patent does not disclose reliance on ribs for retaining the needle, but instead discloses (column 4, lines 17-19) that "an epoxy or other such permanent sealing and retention means is continuously engaged between needle cannula 42 and inner mounting sleeve 38." For these reasons, it is respectfully submitted that claim 15 is patentable over Curie in view of Hausser.

Claims 40 and 41 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Shaw (U.S. Patent No. 6,210,371) in view of Curie. The Examiner has taken the position that it would have been obvious to one having ordinary skill in the art "to substitute the locking mechanism of Shaw for the locking mechanism for Curie in order to provide a means to prevent accidental infection from exposure of the contaminated needle to the user."

Claims 40 and 41 are allowable for reasons generally set forth above. Specifically, neither the Shaw patent nor the Curie patent provide a teaching or suggestion for the claimed locking mechanism "characterized by the legs being mutually joined at respective distal ends thereof."

#### CONCLUSION


In view of the above amendments and remarks, it is respectfully submitted that the application is in condition for allowance and notice of the same is earnestly solicited.

Respectfully submitted,

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